

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is made and entered into by and between Bienvenido Franco (“Franco”), on behalf of himself and all Opt-in Plaintiffs, (referred to collectively with Franco as “Plaintiffs”), on the one hand, and Helene DeCillis (“Defendant”), on the other.

RECITALS

- On October 1, 2009, Bienvenido Franco filed a Second Amended Complaint for alleged unpaid wages in the case styled *Bienvenido Franco, Individually And On Behalf Of All Others Similarly Situated vs. Ideal Mortgage Bankers, Ltd D/B/A Lend America, Michael Ashley, Timothy Mayette, Helene Decillis, and Michael DeCillis*, 07 CV 3956, United States District Court, Eastern District of New York (referred to as the “Lawsuit”); and
- Plaintiffs and Defendant Helene DeCillis (“DeCillis”) desire to settle fully and finally all differences between them.

THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Plaintiffs and Defendant agree as follows:

1. DeCillis’s Representations. As a material inducement to Plaintiffs to enter into this Agreement, DeCillis has made: 1) accurate representations concerning her inability to satisfy Plaintiffs’ alleged damages in this case; and 2) accurate representations contained in her contemporaneously-signed declaration.

2. Non-Admission of Liability. This Agreement shall not in any way be construed as an admission by DeCillis of any wrongful conduct with respect to Bienvenido Franco, or any other member of the plaintiff class in the Lawsuit. DeCillis’ agreement to settle shall not be construed as an admission that any individual plaintiff has any rights whatsoever to money damages as against him. Specifically, DeCillis hereby disclaims any liability to or wrongful acts against Bienvenido Franco or any other person.

3. Dismissal with Prejudice. Following execution of this Agreement and within ten (10) days of the Court’s approval of this settlement, if any, Plaintiffs’ Attorney will file a Stipulation Of Dismissal with the Court.

4. Release. Plaintiffs, individually and as a class, hereby irrevocably and unconditionally release, acquit, and forever discharge Helene DeCillis, her heirs, executors, assigns, successors, representatives, attorneys, affiliates, and all persons acting by, through, under, or in concert with any of them, (collectively “Releasees”), from any and all charges, complaints, claims, judgments or liabilities for alleged failure to pay overtime or minimum wages by Ideal Mortgage Bankers, Ltd., d/b/a Lend American Inc. (“Ideal”), under the United States Fair Labor Standards Act, any New York State counterpart statute, or for any wage and hour claims that Plaintiffs may have had from the beginning of time until the date of the execution of this Agreement.

5. Cooperation.

(a) DeCillis shall cooperate with Plaintiffs' continued investigation and prosecution of the Lawsuit, as follows: (i) DeCillis will assist in Plaintiffs' preparation for trial; (ii) DeCillis will testify at trial in the United States District Court, Eastern District of New York against Defendant Michael Ashley consistent with her contemporaneously-signed declaration; (iii) DeCillis will assist Plaintiffs with their claims against Lend America in Lend America's bankruptcy case; (iv) DeCillis will assist Plaintiffs in any collections actions or proceedings relating to Michael Ashley or Lend America (v) DeCillis's assistance must include, without limitation, identification of persons or entities that she has a reasonable basis to believe may have been used by Ideal or Michael Ashley to hide assets, and production of any documents in her possession that she has a reasonable basis to believe will be useful toward that end.

(b) It is acknowledged that while DeCillis shall use her best efforts to cooperate with plaintiffs' counsel in good faith.

6. Governing Law. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of New York, without regard to principles of conflict of laws.

7. Binding Agreement. This Agreement shall be binding upon the parties and upon their respective heirs, administrators, representatives, executors, predecessors, and assigns, and shall inure to the benefit of Releasees, Plaintiffs, and to their respective representatives, predecessors, and assigns.

8. Severability. The provisions of this Agreement are severable, and if any part of it is found to be unenforceable, the other paragraphs shall remain fully valid and enforceable.

9. Jointly Drafted. This Agreement has been jointly drafted by the Parties.

10. No Waiver. The failure to enforce at any time, or for any period of time, any one or more of the terms of this Agreement shall not be a waiver of such terms or of the right thereafter to enforce each and every term of this Agreement.

11. Sole and Entire Agreement. This Agreement sets forth the entire agreement regarding the subject matter hereof between the parties hereto and fully supersedes any and all prior oral or written agreements or understandings between the parties hereto pertaining to the subject matter hereof. This Agreement may be modified only in writing duly executed by both parties.

12. Counterparts. This Agreement may be executed in two or more counterparts, each of which counterpart shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument. Fax or PDF copies shall be deemed originals.

13. Consultation with Counsel. DeCillis fully understands her right to discuss all aspects of this Agreement with her attorneys, that to the extent, if any, they so desired, DeCillis has availed herself of this right. DeCillis affirms that she has carefully read and fully understands all of the provisions of this Agreement and that she is voluntarily entering into this Agreement.

Agreed to on behalf of the Named Plaintiffs and Opt-Ins, Individually and Collectively:

Bienvenido Franco

Bienvenido Franco

Agreed to by Helene DeCillis:

Helene DeCillis

By: Helene DeCillis



Audit Trail

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VIEWED

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Viewed by Bienvenido Franco



SIGNED



COMPLETED

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The document has been completed.